

FILED
U.S. DISTRICT COURT
2006 OCT -4 P 3:13

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THOMAS J. LOWERY,

Plaintiff,

vs.

STATE OF UTAH; UTAH THIRD
DISTRICT COURT; and LEON A. DEVER,
in his official capacity as a Utah Third
District Court Judge,

Defendants.

ORDER ADOPTING REPORT AND
RECOMMENDATION

Case No. 2:05 CV 884 TC

Plaintiff, Thomas J. Lowery, filed his initial complaint in this matter on October 26, 2005, and then amended his complaint on April 25, 2006. Plaintiff's amended complaint is based upon Judge Leon A. Dever's dismissal of a civil suit filed by plaintiff in the Third District Court. The matter was referred to United States Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(B). Judge Warner issued a Report and Recommendation in which he addressed two outstanding motions: (1) State of Utah, Utah Third District Court, and Judge Leon A. Dever's (collectively, "Defendants") motion to dismiss Thomas J. Lowery's ("Plaintiff") amended complaint; and (2) Plaintiff's motion for leave to amend his complaint for a second

time. The Report and Recommendation recommended that Defendants' motion to dismiss be GRANTED and all of Plaintiff's claims be dismissed with prejudice for the reason that those claims are barred by the doctrine of claim preclusion. The Report and Recommendation further recommended, after careful review of Plaintiff's proposed second amended complaint, that Plaintiff's motion for leave to amend his complaint for a second time be DENIED as the second amended complaint would still be subject to dismissal and, consequently, the amendment would be futile.

Copies of the Report and Recommendation were mailed to the parties and notified of their right to file objections. Plaintiff filed his objection on September 25, 2006.

The court has carefully reviewed this matter *de novo* and agrees with Judge Warner's determination. Mr. Lowery's claims are without merit. Accordingly, the Report and Recommendation is adopted as the order of this court. Defendant's motion to dismiss is GRANTED and Plaintiff's claims dismissed with prejudice. Plaintiff's motion to file a second amended complaint is DENIED.

DATED this 4th day of October, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge